

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 114, 115 & 116 OF 2023

In the matter of change of tariff category & retrospective recovery

The Chairman Ayodhya Park..... Appellant
Rep. No. 114 of 2023 –C. No. 266517011401
Rep. No. 115 of 2023 -C. No. 266517010758
Rep. No. 116 of 2023 -C. No. 266517010715

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Kolhapur (U) (MSEDCL).... Respondent

Appearances:

Appellant : 1. Ranjeet Parekh, Representative
2. Arun Ajgavkar, Representative

Respondent : 1. Sunilkumar Mane, Executive Engineer
2. Vilas R. Shirke, Addl. Ex. Engineer, Market Yard S/dn.
3. Asmita Jadhav, Asst. Accountant


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 1st January 2024

Date of Order : 15th January 2024

ORDER

These three Representations were filed on 6th November 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the individual Orders dated 26th September 2023 passed by the Consumer Grievance Redressal


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Forum, MSEDCL, Kolhapur (the Forum). The Forum, by their individual orders, have partly allowed the grievance applications by directing the Respondent as below:

(The orders of the Forum being in Marathi, their operative parts are translated.)


- 2) To reconnect the said connections, which were illegally disconnected, immediately on receipt of this order.
- 3) To quash the tariff difference supplementary bill of Rs.11,78,163/- for July 2023.
- 4) To issue a new supplementary bill retrospectively from June 2023 for 2 years for the period from June 2021 to May 2023
- 5) The Appellant's prayer for compensation has been rejected.

2. Aggrieved by the above said orders, the Appellants have filed these representations. The e-hearing was held on 01.01.2024 through video conference. The parties were heard at length. The Respondent filed its replies individually dated 23rd November 2023, which are clubbed together for the sake of this order. For easy understanding, the Respondent's submissions and arguments are stated first as below:-

- (i) The Appellants are 3 phase LT residential consumers with date of supply, Sanctioned Load, Contract Demand, Activity, etc., as below:

Table 1 :

Rep. No.	Appellant	Consumer No.	Address on the bill	Sanctioned load (KW)	Date of Supply	Purpose
114/2023	The Chairman Ayodhya Park	266517011401	Ayodhya Park, E Ward Kawala Naka, Kolhapur	3.73	10/11/2003	Lift for Common use
115/2023	The Chairman Ayodhya Park	266517010758	C Wing Lift, Ayodhya Park, Kawala Naka, Kolhapur	3.73	2/10/2003	Lift for Common use
116/2023	The Chairman Ayodhya Park	266517010715	A Wing Lift, Ayodhya Park, Kawala Naka, Kolhapur	3.73	2/10/2003	Lift for Common use


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The connections are being used for the common purpose of lift in 3 wings of the residential complex. Initially, from 2003, the Appellants were billed under Industrial Tariff Category. ‘Industrial’ tariff is lower than ‘residential’. At present, the Appellants are billed under residential tariff category from June 2023 onwards.


- (ii) The Flying Squad of Kolhapur inspected the premises on 04.11.2022, when it was observed that the Appellants were being mistakenly billed under industrial tariff category instead of residential for their lift connections.
- (iii) When asked the reason for this, the Respondent stated that earlier, lifts of 5 HP sanctioned load were being billed under industrial tariff category, considering the general motive power. The Maharashtra Electricity Regulatory Commission (the Commission) came in force from 1999 onwards and started functioning in full capacity as per the Electricity Act, 2003(the Act). At that time (around 2003) there was some ambiguity about the proper classification of such lifts because of the tariff order in force. The Commission by its Tariff Order dated 26.06.2015 in Case of 121 of 2014 clearly classified such lifts under Residential Tariff Category. The relevant portion is reproduced as below:

“LTI (B): LT – Residential

Applicability:

This category shall be applicable for electricity used at Low/Medium Voltage for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, water pumping in the following places:

- a) *Private residential premises, Government/semi-Government residential quarters;*
- b) *.....*
- f) *Government / Private / Co-operative Housing Colonies (where electricity is used exclusively for domestic purpose) only for common facilities, like Water Pumping / Street Lighting / Lifts /Parking Lots/ Fire Fighting Pumps / Premises (Security) Lighting, etc, :” (Emphasis added)*


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- (iv) The Licensee was empowered to classify a consumer into the proper tariff category as per Regulation 13 of the Supply Code Regulations 2005, which is now repealed by the Regulation 14 of the MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021. (Supply Code & SOP Regulations 2021), which is applicable now, specifies as under:

"14. Classification and Reclassification of Consumers into Tariff Categories.

The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer:


Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission."

- (v) The Respondent issued provisional bills of retrospective tariff difference between industrial and residential, as per recommendation of Flying Squad Report dated 04.11.2022, which are tabulated as below:

Table 2:

Rep. No.	Name	Consumer No.	Date of Inspection of Flying Squad	Period of Tariff Difference (Ind. to Res.)	Provisinal Assessment Amount (Rs.) & Date of issue of the bill	Second Assessment period	Assessment Amount in July 2023 bill (Rs.)
114/2023	The Chairman Ayodhya Park	266517011401	04.11.2022	July 2015 to Nov. 2022	10,93,110/- dt. 02.01.2023	July 2015 to May 2023	11,78,163/-
115/2023	The Chairman Ayodhya Park	266517010758	04.11.2022	July 2015 to Nov. 2022	1,45,890/- dt. 02.01.2023	July 2015 to May 2023	1,60,260/-
116/2023	The Chairman Ayodhya Park	266517010715	04.11.2022	July 2015 to Nov. 2022	18,830/- dt. 02.01.2023	July 2015 to May 2023	20,115/-

- (vi) The Respondent cited the Judgment dated 18.02.2020 of Hon'ble Supreme Court in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla in support of its claim of retrospective recovery.


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- (vii) The Respondent had also quoted a judgment passed by the Hon'ble Supreme Court in Civil Appellate Jurisdiction No. 7235 of 2009 titled M/s. Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam. The Court held that: -

'though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)". This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error.'

This is a case of escaped billing. The Respondent is entitled to recover the dues retrospectively, as the Appellants have consumed electricity for the purpose of residential use.

- (viii) The Respondent issued the supplementary bill on 02.01.2023, therefore the amount became first due on 02.01.2023 for the period from Jul. 2015 to Nov. 2022. The Forum should have counted the 2 years period backwards from Nov. 2022, i.e. from Dec. 2020 to Nov. 2022. Instead, it allowed recovery only from June 2021. The Appellants were well aware of the said supplementary bills, as there were various discussions between the Respondent and the Appellants. The Appellants sent a legal notice on 06.06.2023 and threatened legal action. That is why the supplementary bills were not added in the monthly bill. The supplementary bills were also referred to the higher authority in MSEDCL for approval and advice in the matter. Based on that the Respondent revised the supplementary bills for the period from June 2015 to May 2023, as tabulated in Table 2. [Note: The revised bills are actually higher and for a longer period.]
- (ix) It is an obligation on the consumer's part to contact the distribution licensee in case the consumer is receiving an incorrect bill under the wrong tariff category. They are also equally responsible for the under-billing.



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- (x) On 04.11.2022, for the first time, the Respondent detected that the consumer was being applied the wrong tariff. MSEDCL issued the tariff difference Supplementary Bills on 02.01.2023. Therefore, the amount became first due on 02.01.2023. The delay caused to show the actual effect of supplementary bill in the month of July 2023 was an administrative delay and nothing much.
- (xi) The supply of the Appellants was disconnected on 23.07.2023 as the Appellants refused to pay the supplementary bills. A notice of disconnection was issued on 02.01.2023. *[Note: The Respondent seems to argue that the supplementary bill dated 02.01.2023 was itself the required notice of disconnection.]*
- (xii) The Appellants filed the grievance applications in the Forum on 01.09.2023. The Forum partly allowed the grievance applications, and directed to reconnect the supply. The supply of the Appellants was reconnected on 27.09.2023 as per the directions of the Forum. The Forum has erred by not appreciating the fact that the present dispute falls under recovery of arrears for past inadvertent mistakes, which fall under the ambit of “escaped billing”. The Forum also failed to consider that the supplementary bills were issued to the Appellants on 02.01.2023. The Respondent prays that the order of the Forum be quashed and set aside. The Appellants have made a prayer for compensation of Rs. 1 lakh rupees, for the first time which was not made in the Forum.
- (xiii) The Appellants committed in the legal notice dated 06.06.2023 that they are ready to pay the retrospective recovery, and requested to restrict the recovery.
- (xiv) The consumption Pattern of the concerned lifts of the Appellants is tabulated below:

Table 3 :

Rep. No.	Consumer No.	Consumtion Pattern at present
114/2023	266517011401	1200 to 2100 units/month
115/2023	266517010758	400 to 600 units/month
116/2023	266517010715	160 to 200 units/month



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(xv) In view of the aforesaid facts, the Respondent prays that the representation of the Appellant be rejected.

3. The Appellants' submissions and arguments are as below: -

- (i) The Appellants are 3 phase LT residential consumers. Details of date of supply, Sanctioned Load, Contract Demand, Activity, etc., are tabulated in Table 1 of Para 2 (i). The supply of these connections is commonly used for lifts having 5 HP motor each in each building of the residential complex.
- (ii) The Appellant society comprises of 8 wings with a total of 170/180 flats including row houses. It also comprises of 25/30 shops on the road side of the complex with a different entry.
- (iii) The Flying Squad of Kolhapur visited the premises on 04.11.2022 and pointed out that the lift connections were wrongly billed under 'industrial' tariff category instead of 'residential'. The Appellants had initially applied for new connections under residential use only. The commercial part where the shops are located have their connections in a separate meter cabin. This is distinct from the residential connections. The Respondent is duty bound to classify the consumers into various Commission approved tariff categories based on their purpose of use. The Appellant is not responsible for wrong tariff categorization.
- (iv) The Respondent issued provisional bills to the Appellants on 02.01.2023 which are tabulated in Table 2, and requested to pay these amounts within seven days. The Appellants sent a legal notice dated 06.06.2023 through Adv. Satish Kumbhar to the Respondent, and requested to withdraw the illegal supplementary bills. The Appellants visited the Respondent's office on many occasions for this purpose. However, the Respondent did not reciprocate positively. These three connections were disconnected on 23.07.2023 without any notice as per Section 56(1) of the Act, thereby causing sufferance especially to the Senior Citizens in the society.
- (v) The Appellants filed grievance applications in the Forum on 01.09.2023 for reconnection and withdrawal of the supplementary bills. The Forum partly allowed the


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grievance applications. The supply of the Appellants was accordingly reconnected on 27.09.2023. The Appellants were in the dark for 2 months and 5 days.


- (vi) The Appellant referred to the Commission's order dated 11.02.2003 in Case No. 24 of 2001. The relevant portion is quoted below:

“No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective”.

- (vii) The Appellant also cited the Judgement in Writ Petition No.10536 of 2019 dated 09.06.2020 of the Hon'ble Bombay High Court in Case of MSEDCL V/s Principal, College of Engineering, Pune in support of its arguments.
- (viii) In view of above, the Appellants pray that the Respondent be directed to -
- Withdraw the supplementary bills as tabulated in Table 2.
 - Take stringent action against the concerned staff.
 - Pay compensation of Rs.1 lakh towards mental agony due to illegal disconnection without notice.

Analysis and Ruling:

4. Heard the parties and perused the documents on record. The Appellants are 3 phase LT residential consumers, with details of date of supply, Sanctioned Load, Contract Demand, Activity, etc., as tabulated in Table 1. The supply of these connections is commonly used for lifts of the residential complex. The Appellants were (mistakenly) billed under 'industrial' tariff


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category previously from the date of the supply. When asked the reason for this mistake, **the Respondent contended that “general motive power” was billed under industrial tariff category.** In order to determine the genesis of applying industrial tariff to a residential lift, it is necessary to refer to various orders of the Commission.

➤ **Commission’s Tariff Order dated 12.09.2010 in Case No. 111 of 2009 with effect from 01.09.2010**

“ LTI: LT – Residential

Applicability

Electricity used at Low/Medium Voltage for operating various appliances used for purposes like lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in the following places:

a) *Private residential premises,*

b)

g) *Residential premises used by professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants, etc., in furtherance of their professional activity in their residences but shall not include Nursing Homes and any Surgical Wards or Hospitals.”*

This order is silent about lifts.

➤ **Commission’s Tariff Order dated 16.08.2012 in Case No. 19 of 2012 with effect from 1st August, 2012 :**

“LTI: LT – Residential

Applicability

Electricity used at Low/Medium Voltage for operating various appliances used for purposes like lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in the following places:

a) *Private Residential Premises, Government / Semi-Government Residential Quarters.*

b)

.....

.....

.....



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f) Government / Private / Co-operative Housing Colonies (where electricity is used exclusively for domestic purpose) only for common facilities, like Water Pumping / Street Lighting / Lifts / Parking Lots / Fire Fighting Pumps / Premises (Security) Lighting, etc.

➤ Subsequently, the Commission issued various tariff orders which are listed below:

- I. Case No. 121 of 2014 dated 26.06.2015
- II. Case No. 48 of 2016 dated 03.11.2016
- III. Case No. 195 of 2017 dated 01.09. 2018
- IV. Case No. 322 of 2019 dated 31.03.2020

The wording of these orders regarding LT 1(b) Residential are nearly the same as the Tariff Orders referred above, especially of common connections of Co-operative Housing Societies.


5. In the present case, the assessment period for tariff difference was 90 months, from June 2015 to Nov. 2022. This assessment period does not fulfil the statutory requirement of Section 56(2) of the Act. This Section is reproduced below:

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

6. This Section has been interpreted by the larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. The Court has allowed 24 months’ recovery in cases of mistake or oversight. The relevant portion of the Larger Bench Judgment is quoted below:

As a result of the above discussion, the issues referred for our opinion are answered as under:

*A. The issue No. (i) Is answered in the negative. **The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.***


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- B. As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.
- C. The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.(Emphasis added).

In view of the above judgment, the period of assessment needs to be restricted for retrospective recovery to only 24 months.

7. The ratio of various other orders referred to by the Appellants are not applicable in the instant case in view of the above Larger Bench Judgment.

8. The Forum, in its orders dated 26.09.2023 has given a reasoned and speaking order in principle. Only the calculation of the 24 months period is slightly erroneous. The provisional assessments were issued on 02.01.2023 for the period from June 2015 to Nov. 2022. Hence, the valid 24 months' period for retrospective recovery will be Dec. 2020 to Nov. 2022. No doubt, the Respondent suffered revenue loss towards tariff difference between industrial and residential for the period from Jun. 2015 to Nov. 2020 as the Respondent failed to apply the appropriate tariff, but this was due to deficiency in its own service. Hence, the Forum's orders are modified to the extent below:

9. The Respondent is directed as under: -
- a) To revise the supplementary bills for tariff difference from industrial to residential for the period from Dec. 2020 to Nov. 2022, without interest and delayed payment charges from the date of issue of the supplementary bill till the date of this order.


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- b) To allow the Appellant to pay the revised supplementary bill in six equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will accrue, and the Respondent has the liberty to take action as per law.
- c) Compliance to be submitted within two months from the date of issue of this order.
- d) Other prayers of the Appellant are rejected.

10. The present Representation is disposed of accordingly.

11. The secretariat is directed to refund the amount of Rs.25000/-, Rs.21000/- and Rs. 2200/- in Rep. Nos. 114, 115 & 116 of 2023 respectively to the Respondent for adjusting in their ensuing bills.

Sd/-
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